



SYARIAH CIVIL PROCEDURE

WEEK 3

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INTRODUCTION

- Summons is one of the modes of commencing an action in the shariah court.
- It refers to proceeding in which a claim is made by the plaintiff for damages and etc
- Show cause letter prepared by the plaintiff given to the defendant asking him to appear before the court to answer any claim against him.

SUMMONS

PART IV-SS 23-27

- **Section 23- Every action shall be commenced by summons in the form provided.**
- **The statement of claim shall be endorsed at the back of the summons and comply with the requirements of section 52- (i) signed (ii) concise statement (iii) sufficient particulars (iv) relief claimed.**
- **If impracticable to endorse the whole of the SOC-Separate sheet of paper.**

Section 24

- Every summons against a single defendant shall be presented for filing in triplicate and an additional copy shall be presented for every additional defendant.

SECTION 25

- The registrar shall: _
- (i) examine the summons and if it appears to be in proper form.
- (ii) paid appropriate fees
- (iii) assign serial no., seal, sign and issue it and deliver to the bailiff for service.
- He may reject or direct to amend the summons.

SECTION 26

- A summons shall not be served more than 12 months after issue unless by leave of the court.
- Requirements:-
- Reasonable efforts and any other reasonable reason.

SECTION 27

- If a summons is lost after issue, the Court may order a new summons to be issued bearing the date of and having the like effect as the original summons.

PEGUAM SYARIE

PART V-SS 28-33

- Who is a Peguam Syarie?
- Members of the Bar and non members of the Bar. Peguam syarie refers to those who practice in *Syariah* courts in Malaysia and is governed by the respective states peguam *syarie* rules.
- Peguam syarie is a person who is given the right by rules enacted by any state to appear and represent his client in every shariah court case within the confines of such state or federal territories, respectively.

SECTION 28

- Peguam syarie retained to represent a party in any proceedings shall file a memorandum of his retainer in the form provided before taking any step and declare it before the court.

SECTION 29

- Where more parties than one are represented by the same peguam syarie in any proceedings, service of a single copy of any document on the peguam syarie shall be sufficient service on all such parties.

SECTION 30

- If a party desires to change his peguam syarie he shall file a memorandum in the form provided and serve all other parties and shall comply with section 28.

SECTION 31

- If a party desires to discharge his peguam syarie he shall file a memorandum in the form provided and serve all other parties.

SECTION 32

- If a peguam syarie representing any party applies to be discharged the court may discharge him.
- Notice of the application shall ordinarily be given to the party furnish a new address for service.

SECTION 33

- The death of either party or his peguam syarie determines the retainer.

SERVICE

PART VI-SS 34-46

- There are four types of services:-
- (i) Personal Service;
- (ii) Service on person under disability;
- (iii) substituted service
- (iv) service out of jurisdiction
- Section 34- Every plaintiff and person filing any document in any proceedings shall give an address for service either plaintiff or his lawyer's address.

Personal service-ss 35-41

- Section 35-Service of summons and SOC shall be made personally because the summons and statement of claim is served to initiate the case.
- Inspection
- Seal of the court
- Signature of its proper officer
- Service shall be effected by an officer of the court.
- Other person may serve the summons and SOC with permission of the court.

Section 36

- If the person to be served refuses to accept the document or copy, it may be left near him and his attention directed to it.

Section 37

- A document may be served on the peguam syarie of any party who has filed a memorandum of retainer in accordance with section 28.

Section 38

- Any document delivered at the address for service of any person shall be deemed to be served on the said person.
- Provided that in the case of address not within the local authority limits of the place where the court is situated, any document may be served by despatching the same by prepaid registered post addressed.

Section 39

- A summons commencing an action shall be served not less than 7 clear days before the return date, unless the court shall otherwise order. Return dates may be altered by the Registrar if necessary.

Section 40

- Notice of all other proceedings shall be clear days' notice subject to the provisions of any written law to the contrary and the court otherwise order.

Section 41

- Service may be effected at any place on any day and at any time of the day or night.
- Service after 4.00pm shall ordinarily be deemed to have been effected on the following day.
- After noon on the day of proceeding or at any time on, the weekly holiday or on any public holiday shall be deemed to have been effected on the after such holiday.

Service Person Under Disability

Section 42

- Service shall be made on his guardian ad litem.
- If there is no GAL, on the person with whom he resides or under whose care he is.
- The court may order that service upon PUD shall be deemed to be good service.
- A person in prison shall be served on the officer in charge of the prison-transmitted to him.
- Member of the armed forces- the commanding officer or adjutant of his unit- transmitted to him.

Substituted Service-Section 43

- The court is satisfied that a party who has not given any address for service at the date of the summons or other documents to be served resident within selangor:-
 - (i) If he is keeping out of the way for the purpose of avoiding service
 - (ii) sufficient reason cannot be served in ordinary way.
- The court may order the summons/ documents to be served: - (i) by affixing a copy in some conspicuous place in the court house;
- (ii) in part of the building last resided
- (iii) advertisement in local newspapers

Cont....

- Substituted service shall be as effectual as personal service.
- The court shall fix the time of appearance in court .
- Exception: No order for SS shall be made in respect of:-
 - (i) a subpoena
 - (ii) any document initiating proceedings for the arrest or committal of any person.

Section 44

- Proof of service.
- (i) By affidavit of the person who effected service
- (ii) where the service was personal and the person was not personally known to him by that affidavit and the affidavit of the person who identified the person to be served.
- The person served shall signed an acknowledgement of service but refusal or inability to sign shall not affect the validity of the service.

Section 45

- Any order for service or for SS may be varied by the Court.

Section 46

- A court may issue a warrant for his arrest:-
- (i) seems to believe that he has absconded or will not obey the summons:
- (ii) he fails to appear and the summons is proved to have been duly served in time and no reasonable excuse is offered for such failure.

CONCLUSION

- Students should understand the proceedings for summons, service and and procedures involving peguam syarie.
- These procedures must be complied with in the proceedings.

Thank You



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